

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID W. RUSH, :
: Plaintiff, :
: v. : C.A. No. 07-514 SLR
: CORRECTIONAL MEDICAL :
: SYSTEMS, et al., :
: Defendants. :
:

DEFENDANT'S RESPONSE TO COURT'S MEMORANDUM ORDER (D.I. 39)

Defendant Correctional Medical Services, Inc. ("CMS") hereby responds to the Court's request that it advise the Court if Plaintiff David Rush is receiving the appropriate medical treatment for his Hepatitis C condition, and states as follows:

1. On September 29, 2007, Plaintiff was seen by Lawrence McDonald, M.D. to begin treatment for Hepatitis C. (Exhibit "A") On that date, Dr. McDonald ordered the drugs for the Pegasys protocol (Ribavirin and Interferon). (Exhibit "B") To ensure against any complications, and in reaction to the Plaintiff's complex medical history, Dr. McDonald ordered a chest x-ray and an EKG (*id.*), which studies were conducted on October 15 and 19, respectively. (Exhibit "C") Dr. McDonald had already scheduled Plaintiff to begin receiving the drugs pending the results of these studies. (Exhibit B) Plaintiff was scheduled to begin receiving Ribavirin, one component of the protocol on October 29, 2007. (Exhibit "D") Assuming that Plaintiff tolerated the Ribavirin, he was scheduled to begin receiving Interferon (Pegasys) on November 2, 2007. (*Id.*) Plaintiff refused the Interferon on November 2, stating that he did not believe it was appropriate to administer the drugs separately. He also stated that he had not taken the Ribavirin as

directed. On November 10, 2007, Dr. McDonald met with Plaintiff for a prolonged discussion about Plaintiff's condition, history, the treatment and the protocols and risk factors. Plaintiff declined to engage in the protocol as designed and prescribed by Dr. McDonald. (Exhibit "D"). Throughout October and November, although Plaintiff declined the drugs, he continued to have blood work done per the program set up by Dr. McDonald. The results of the blood work showed decline in Mr. Rush's condition such that Dr. McDonald is no longer certain that the treatment is appropriate for Mr. Rush, and he has requested an ultrasound study to determine the extent of Mr. Rush's liver damage.

2. Counsel is available at the call of the Court.

Respectfully Submitted

BALICK & BALICK, LLC

/s/ James E. Drnec
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Wilmington, Delaware 19801
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Attorneys for Defendant
Correctional Medical Services, Inc.

Date: November 20, 2007

CERTIFICATE OF SERVICE

I, James Drnec, hereby certify that on the 20TH day of November 2007, the foregoing Defendant's Response to Court's Memorandum Order was filed via CM/ECF and served First Class Mail upon the following:

David R. Rush
SBI # 173418
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ James E. Drnec
James E. Drnec, Esquire (#3789)